

**STATE OF VERMONT  
BOARD OF MEDICAL PRACTICE**

In re: Gene W. Wu, M.D.

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Docket No. MPS 65-0603

**SECOND SUPERSEDING AGREEMENT  
AS TO RESPONDENT'S MEDICAL PRACTICE**

NOW COME Gene W. Wu, M.D., (Respondent), and the State of Vermont, by and through Attorney General William H. Sorrell and undersigned counsel, Assistant Attorney General James S. Arisman, and agree and stipulate as follows:

1. Gene W. Wu, M.D., holds Vermont Medical License Number 042-0009913, issued by the Board of Medical Practice on August 24, 1999. Respondent, an anesthesiologist, presently holds privileges at Springfield Hospital and contemplates assumption of a new position at Brattleboro Memorial Hospital.

2. Jurisdiction vests with the Vermont Board of Medical Practice (Board) by virtue of 26 V.S.A. § 1353 and other provisions of Chapter 23 of the Vermont statutes.

**I. Background.**

3. Respondent took a voluntarily leave of absence from practice activities in June 2003 due to medical disability. Respondent later also signed a voluntary Cessation of Practice Agreement with the Board of Medical Practice. Subsequently, Respondent's medical condition improved, and he resumed practice, subject to terms set forth in agreements with the Medical Board, dated September 3, 2003; October 1, 2003; and November 11, 2003.

4. Now, based on Respondent's continued favorable medical condition, the advice of his treating doctor and peers, and review of his medical practice and care of patients,

Respondent has determined after consultation that he shall enter into this superseding practice agreement. The instant document supersedes and replaces any and all prior agreements between Respondent and the Board.

5. This agreement addresses the number of hours each week that Dr. Wu shall practice, his "call" duties, and provisions related to his practice of anesthesiology in a hospital setting. This agreement is subject to Dr. Wu's continuing safe and satisfactory performance of all medical responsibilities. Since his return to work in early September 2003, Respondent's intra-operative skills and decision-making have been reported to be at the appropriate level of performance. Dr. Wu, after consultation with peers and administrators, increased his hours of work and independent practice. His colleagues and his treating doctor concurred that such steps were consistent with patient safety, as well as Dr. Wu's continued medical progress and his general well-being.

6. Respondent acknowledges that he has been offered the opportunity to consult an attorney and receive legal counsel regarding this matter. Respondent agrees that he is voluntarily and knowingly agreeing to all terms and conditions set forth herein.

## **II. Conditions of Licensure.**

7. Respondent's Vermont license to practice medicine has been and will continue to be designated as "CONDITIONED" until further order of the Board and shall be subject to the following:

### **A. Hours of Work; "Call" Responsibilities.**

8. Pursuant to the terms of this agreement Respondent may practice medicine subject to the terms and conditions herein. He agrees that such practice generally shall consist

of less than 50 hours per week of work involving patient contact, regardless of location.<sup>1</sup> The parties agree that the total number of hours to be worked normally shall not require Dr. Wu to be present at the hospital in excess of six days per week. Respondent agrees that any petition from him to increase the maximum number of hours per week that he is permitted to work may be considered and decided, in its sole discretion, by the Board investigative committee to which this matter is assigned. The investigative committee's decision shall be final and unreviewable.

9. Respondent may carry out "call" duties related to his practice. He agrees that he shall be assigned to and work an average of no more than six days of call during any two-week period. Respondent shall plan his work schedules with peers and administrators of his hospital practice, so that his schedule will be consistent with the assignment of a maximum of an average of six "call" days during any two-week period. Respondent shall maintain an accurate and complete written record identifying all scheduled call assignments and all hours actually worked.<sup>2</sup> Upon request, Respondent shall promptly produce this record to the Board or its agents for review.

10. The parties agree that Respondent's participation in meetings and conferences related to his hospital duties shall not be deemed to be the practice of medicine and shall not be counted against the maximum total number of hours to be worked per week. However,

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1. Normally, Respondent's work schedule will require 50 hours or less per week. Respondent acknowledges that the Board may review his work schedules and hours on "call" and the hours actually worked. He agrees that the Board, in its sole discretion, may act pursuant to the provisions of Paragraphs 12, 13, 30, and 31.

2. The written record shall be current and include dates and times actually worked or on call and shall clearly identify the nature of Respondent's activities for each entry.

Respondent agrees that his participation in such non-practice meetings and conferences shall be limited and that he shall endeavor with his employer and colleagues to reasonably limit such involvement on his part. Respondent agrees that non-practice matters shall not be permitted to interfere with his continued medical treatment.

11. Respondent understands and agrees that his peers or administrators at his hospital practice site may notify the Board of Medical Practice at any time regarding any concern(s) as to Respondent's work schedule, call assignments, quality of patient care, and ability to practice medicine safely. Any occurrence related to Respondent's practice requiring the unplanned assistance or intervention of other physicians or surgical support staff shall be reported immediately in writing to the Board by Respondent and by appropriate staff of his hospital practice setting.

12. Respondent agrees that the Board of Medical Practice, as it may deem necessary, in its sole discretion, may act to reasonably reduce and limit the number of hours permitted under paragraph 8, above, and the number of "call" hours permitted under paragraph 9.

#### **B. Continued Medical Treatment.**

13. Respondent's practice of medicine under this agreement is based upon the mutual agreement of Respondent, his colleagues, his treating practitioner(s), and the Board of Medical Practice with regard to continuation of his improved medical condition. Respondent agrees that he shall immediately cease and desist from the practice of medicine if any of his treating practitioners or the Board deem such practice by him to be inconsistent with patient safety or Respondent's course of treatment and well-being.

14. Respondent agrees to pursue in good faith and without interruption such care and treatment of his medical condition as may be recommended to him by his treating professional(s). The Board may review and, in its sole discretion, approve or disapprove the provider, the frequency of treatment, and/or any proposed plan of treatment. Respondent shall bear all costs of care and treatment, assessment and/or evaluation, and monitoring and reporting but shall be permitted to share such costs with third parties, subject to Board review and approval.

15. Respondent agrees that he shall ensure that his treating physician(s) shall provide the Board at least quarterly reports regarding his involvement in treatment, prognosis, and ability to practice medicine with reasonable care, skill, and safety.

16. Respondent agrees that he shall execute any and all waivers that may be required for the Board, its staff, or agents to review all assessments, evaluations, diagnoses, records, or reports regarding his care and treatment and his medical condition. Respondent already has signed a current general authorization for the release of his medical records and information to the Board. Respondent agrees not to terminate such authorization and to execute such new or further authorizations for the release of his medical records and information as may be required by the Board. Respondent also agrees that the Board or its agents may communicate orally to obtain information from the practitioners involved in his care and treatment.<sup>3</sup>

17. Respondent agrees and assures that his medical treatment and well-being shall receive first priority in establishing his work schedule at his hospital or other practice site.

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3. Respondent agrees that he promptly shall undergo such assessment or evaluation as the Board, in its sole

### **C. Due Process; Further Agreements.**

18. Respondent shall retain all rights of due process regarding the status of his medical license, his medical condition, and determination of his ability to practice medicine safely. Unless otherwise provided, the parties agree that Respondent may petition the Board for modification of or relief from the terms and conditions of this agreement, with regard to his practice of medicine, if and when he and his treating practitioners agree that such modification would be appropriate and consistent with patient safety and Respondent's well-being.

19. Respondent also understands and agrees that his compliance with the terms and conditions herein and with the recommendations of those providing care and treatment to him may be considered in any subsequent determination or proceeding before the Board regarding his license. Respondent agrees that the Board, in its sole discretion, may consider and act upon any petition from Respondent at a later date for modification or relief as to the terms herein.

### **D. Practice Site; Employment; Structured Group Setting.**

20. Respondent agrees that he shall practice medicine only in a structured group setting in which he shall have frequent and regular contact and interaction with other physicians. Respondent agrees that while so employed he shall maintain regular communication with his Supervising Physician. See pertinent Paragraphs, below. Respondent agrees that he shall petition in advance for approval of any proposed change of employer, practice site, or work schedule. Such petition shall be in a form and manner satisfactory to the Board or assigned investigative committee.

21. Any group practice or institution, as referred to above, shall be considered provisionally approved upon notice and petition from Respondent, subject to actual approval or disapproval at a later date, at the sole discretion of the Board. As appropriate, Respondent agrees to present to the Board a petition identifying the location(s) where he seeks to practice, his proposed employer, and proposed work schedule. He agrees that he shall not see patients or practice at any other location without the approval of the Board. Moreover, Respondent agrees that he shall not practice medicine in any form or manner outside the scope of his employment agreement or affiliation with such group practice or institutional employer and his assigned duties there.

22. The parties expressly agree that Respondent's continuing employment at a Board-approved group practice or institutional employer is a **material term** of this Agreement. The parties agree that any interruption or cessation of Respondent's employment relationship with such group practice or institutional employer shall constitute a circumstance of non-compliance by Respondent with the terms and conditions of this agreement and shall require Respondent voluntarily and immediately to cease all practice activities in the State of Vermont, pending further order of the Board.

23. Respondent expressly agrees that he shall comply fully with the terms of any and all contractual or other practice agreements with his employing institution. Respondent agrees that the terms and conditions of all such agreements shall be incorporated by reference as required elements of this agreement with the Board, to the extent that they are not inconsistent with the terms and purposes of this agreement. If any such term or condition is

deemed to be inconsistent with this agreement, the provision(s) most protective of patients and the public shall prevail, to be determined by the Board, in its sole discretion.

#### **E. Supervising Physician.**

24. Respondent agrees he shall practice medicine only so long as he is meeting regularly with a Board-approved Supervising Physician at the practice location where Respondent works. Any proposed Supervising Physician shall be considered provisionally approved for the period of time between the filing of a petition by Respondent seeking approval and the date of the Board's actual approval or denial of the petition. Respondent shall take reasonable steps to ensure that the provisionally approved Supervising Physician(s) complies with any reporting requirements. The Supervising Physician shall be fully informed of the terms of this agreement. Respondent shall provide a complete copy of this agreement to the Supervising Physician.

25. The Supervising Physician shall meet in person with Respondent at least once each week and shall discuss Respondent's care of patients, any problems arising with respect to patient care, and Respondent's treatment and ability to practice medicine safely. Such meetings shall be of such duration and scope as to permit meaningful, substantive communication regarding Respondent's practice activities and his own medical needs. Respondent agrees that other practitioners within his work setting may also communicate with the Supervising Physician and with the Board regarding any and all matters identified herein.

26. The Supervising Physician shall submit at least quarterly written reports to the Board, regarding Respondent's practice activities and Respondent's ability to practice medicine with reasonable care, skill and safety. Such written reports shall continue for so long



as this agreement remains in effect or until the Supervising Physician ceases to provide the services described herein.

27. If the Board does not approve or withdraws its approval of a Supervising Physician proposed by Respondent, Respondent must confer with the Board and thereafter propose another Supervising Physician. Respondent may not practice medicine in any location without an approved Supervising Physician as described herein.

#### **F. Possible Cessation of Practice.**

28. In the unlikely event that circumstances might require such action, Respondent expressly agrees and reiterates here that upon any written or oral request to him by the Vermont Board of Medical Practice or its agents, he shall immediately cease and desist from any and all practice of medicine, as well as any and all prescribing. A request for cessation of practice may be made by the Board or its agents at any time and for such reason(s) as the Board may deem sufficient, in its sole discretion.

29. In lieu of any such cessation of all practice activities, Respondent may be offered the opportunity to agree to the imposition of other terms and conditions upon his license to practice, to protect patients and the public, in the Board's sole discretion.

#### **G. Other Terms and Conditions as to Implementation.**

30. The parties agree that this Agreement shall be a public document, shall be made part of Respondent's licensing file, and may be reported to other licensing authorities and/or entities including, but not limited to, the National Practitioner Data Bank and the Federation of State Medical Boards. Any such reporting shall clearly indicate that this Agreement is a **non-disciplinary** matter.

31. Respondent agrees that he has read and carefully considered all terms and conditions herein and agrees that these may be adopted and shall be enforceable as an order of the Board, pursuant to 3 V.S.A. § 809(d) and 26 V.S.A. § 1353(4). He agrees to accept and be bound by these terms and conditions until such time as he may be expressly relieved of these or they are modified in writing by the Board. Respondent agrees to continue to adhere fully to the terms of any written “assurances” previously provided by him and also to the terms of any practice agreements or contracts he has executed in relation to his hospital practice, to the extent that such terms are not inconsistent with the provisions of this agreement.

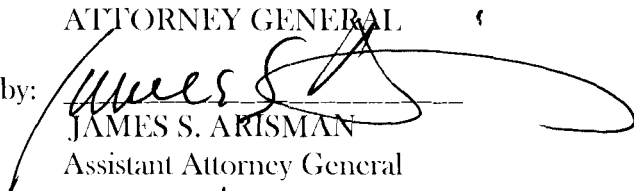
32. This agreement is subject to review and acceptance by the Vermont Board of Medical Practice and shall not become fully effective until presented to and approved by the Board. If the Board rejects any part of the instant agreement, the entire agreement shall be considered void. However, if the instant agreement is deemed acceptable, the parties request that the Board enter an order adopting the terms and conditions set forth herein. Respondent agrees that the Board of Medical Practice shall retain jurisdiction in this matter and may enforce as necessary the terms and conditions herein and those of any other assurances(s) he may have with the Vermont Board of Medical Practice, pursuant to 26 V.S.A. §§ 1354(25), 1356 & 1361 or other statutory authority.

Dated at Montpelier, Vermont, this 29<sup>th</sup> day of October, 2005.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

by:

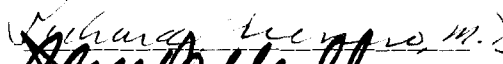
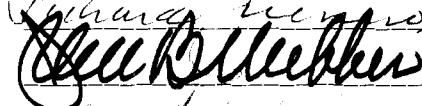
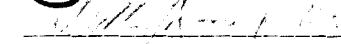
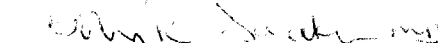
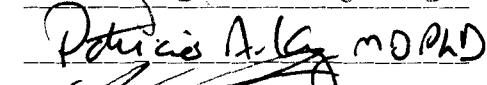
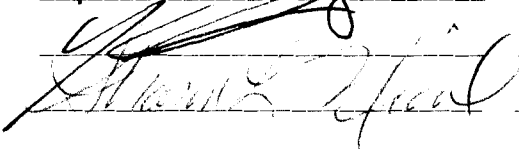
  
JAMES S. ARISMAN  
Assistant Attorney General

Dated at SPRINGFIELD, Vermont, this 24<sup>th</sup> day of OCTOBER, 2005.

  
GENE W. WU, M.D.  
Respondent

\* \* \*

FOREGOING, AS TO GENE W. WU, M.D.  
APPROVED AND ORDERED  
VERMONT BOARD OF MEDICAL PRACTICE

DATED: 11/2/05

ENTERED AND EFFECTIVE: November 2, 2005

Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
05609

Superseding Stip II: Wu; not effective until reviewed and approved by Board